IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5080 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAMMED ISHAK ABDUL SHAKUR QURESHI

Versus

STATE OF GUJARAT

Appearance:

MS SAHEN QURESHI for MR MM TIRMIZI for Petitioner

MR HANSA B PUNNI AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 28/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Ahmedabad City, on 11th of January, 2005, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as cruel person within the meaning of the PASA Act from 11th of January, 2005 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction that the petitioner was a cruel person within the meaning of Section 2(bbb) of the PASA Act. Firstly, the detaining authority took into consideration two crimes filed against the petitioner, first before Gomatipur Police Station on 11th of August, 2004 and second also before Gomatipur Police Station on 6th of October, 2004 for the offence punishable under Sections 5, 6 and 8 of the Bombay Animal Preservation Act, 1954, wherein the petitioner was found in possession of 4 slaughtered bullocks, 5 live bullocks, 2 axes and 2 knives. The detaining authority, secondly, relied upon two statements as recorded by the sponsoring authority on 31st of December, 2004 and 4th of January, 2005, verified by the detaining authority on 10th of January, 2005. The identity of the witnesses is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. Out of two in-camera statements, first incident is of 10th of November, 2004. The witness was at his residence at 1'O clock at noon, he was approached by the petitioner and his accomplices along with weapons to slaughter animals in one bag. The witness was told that the police was after them and, therefore, those weapons were to be concealed by the witness at his residence. Witness refused to conceal weapons. Thereupon, the petitioner and his accomplices started abusing the witness and he was dragged out of his house at Usha Cinema Road and was beaten. The witness was threatened with a knife, so he raised shouts for help. Though a crowd was gathered, but none intervened. The petitioner and his accomplices got exited towards the crowd and ran towards the crowd with open knife, so people started running helter - skelter and public order was disturbed. The second incident is of 16th of November, 2004. At about 4.30 p.m. the witness was going from Usha Road to Rakhial road. He found petitioner and his accomplices sitting there. They approached the witness and stated that the witness was keeping watch over their activities of slaughtering animals and was providing information to

police, and inconsequence, the police was carrying out raids. The witness refused to have provided any information to the police. Thereupon, the petitioner and his accomplices started beating the petitioner. Though a crowd was gathered but, on account of fear of the petitioner, none have intervened. The petitioner and his accomplices threatened the crowd and ran towards it with open knife, so people started running helter - skelter and public order was disturbed.

4. The detaining authority considered thoroughly and exhaustively the investigation papers in the above referred 2 cases as well as the above materials. The detaining authority from the above materials, concluded that the petitioner was a habitual offender and was of cruel mind. The detaining authority further concluded that the petitioner was of ferocious and dangerous tendency and after forming a gang through bullying tactics, was dealing in slaughtering of animals. The persons who objected to the activities of the petitioner were beaten in the public by the petitioner. The detaining authority further concluded that on account of fear and terror of the petitioner, no citizens dared to file complaints against him. In view of the detaining authority, the petitioner was a cruel person within the meaning of the PASA Act and his activities were prejudicial to the maintenance of public order. The detaining authority concluded that the illegal activities of the petitioner were required to be prevented forthwith. After considering other remedial measures available against the petitioner in general law, the detaining authority reached to the subjective satisfaction that there was no other alternative except to detain the petitioner under the PASA Act to prevent his illegal activities forthwith.

5. The detaining authority, therefore passed the order of detention of the petitioner, as aforesaid, which is under challenge in this petition.

6. Learned Advocate Ms. Saheen Qureshi for learned Advocate Mr. M.M. Tirmizi for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record is also taken into consideration.

7. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the ground

that as to whether the order of detention suffers from vice of passing the order with delay.

8. The grounds of detention as placed on record reveal that two offences came to be registered against the petitioner on 11th of August, 2004 and 6th of October, 2004 and he was released on bail on the same day. Thereafter, the sponsoring authority recorded in-camera statements on 31st of December, 2004 an 4th of January, 2004, revealing unreported incidents of 10th of November, 2004 and 16th of November, 2004. The verification of the statements was made by the detaining authority on 10th of January, 2004 and the order was passed on 11th of January, 2005. If date of registration of offence is taken into consideration, this order is passed after three months from 6th of October, 2004.

9. The facts of the present case are squarely covered by a decision of this Court in this matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, as reported in 1997 (1) GLH 381. In the said case, the last registered case was of May 20, 1996 and the impugned order of detention was passed on 5th of November, 1996 i.e. after a delay of 5 months and 15 days. In the said case also, the detaining authority relied on two incidents of 2nd of October and 10th of October, 1996, both unregistered cases. In these circumstances, this Court after relying upon a decision of the Apex Court in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, as reported in 1993 (2) Supp SCC 61, observed that the unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. It was also observed that two unregistered cases were referred only with a view to cover the gap or to give life to a stale case. The order of detention of the said petitioner was quashed and set aside by this court. In the present case also, though order is passed after the delay of three months from the date of registration of solitary crime against the petitioner i.e. on 6th of October, 2004, the detaining authority have relied upon two incidents of 10th of November, 2004 and 16th of November, 2004, but it appears that those unreported incidents are relied upon with a view to cover up the gap between 6th of October, 2004 and 11th of January, 2005 the date of passing of the order. Though the petitioner was released on bail in the crime registered against him on 6th of October, 2004, i.e. the sponsoring authority recorded in-camera statements only on 31st of December, 2004 i.e. after two and half months. Though the detaining authority has dealt with this issue in his affidavit-in-reply vide para-11, but no sufficient

explanation is coming forward to explain delay between 6th of October 2004 to 31st of December, 2004, the day on which sponsoring authority recorded statements. It is only stated in affidavit-in-reply that sponsoring authority collected the material, which is not sufficient explanation. It clearly indicates that these two unreported incidents are relied upon by the detaining authority to cover up the gap, as aforesaid. The facts and circumstances of this case leads to believe that the live link between the activities of the petitioner and the passing of the order is snapped and the grounds for detention are not proximate to the activities alleged against the petitioner. The order under challenge, therefore, vitiates on this ground alone and is required to be quashed and set aside.

10. In the result, the petition is allowed. The order passed by Commissioner of Police, Ahmedabad City, on 11th of January, 2005, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The detenu - Mahammed Ishak Adul Shakur Qureshi is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair